

American jurisprudence, is that an assault causing the death of a viable (or, in the archaic phrase, "quickened") fetus gives rise to criminal liability. The rule in H.R. 503 is that an assault unintentionally causing "pain" to a weeks-old fetus gives rise to criminal liability.<sup>3</sup>

Third, the bill is a transparent effort to undermine *Roe v. Wade*. Since H.R. 503 adds nothing meaningful to substantive federal criminal law, its purpose is purely symbolic: to bestow statutory personhood on fetuses, even those that are not viable.

It is no accident that the bill says nothing about injuries to pregnant women; instead the newly created title is styled "Protection of Unborn Children." An assault on a fetus cannot occur without an assault on the pregnant woman, but the bill is deliberately framed in terms that ignore the woman. To be sure, there is an explicit exception to the criminal penalties in the bill for "conduct relating to an abortion" but make no mistake—this bill is just one more step in the anti-abortion movement's methodical strategy to humanize fetuses, marginalize women, demonize abortion providers, and make the image of abortion less palatable to the American people. The extreme overbreadth of H.R. 503 flows directly from that strategy.

The validity of the constitutional protections established in *Roe v. Wade* exceeds the scope of this testimony and is beyond my field of expertise. But as someone who cares about the integrity of the criminal law, I regret that this skirmish in the abortion wars flares up unnecessarily in the federal criminal code. The criminal justice system is built on ancient principles such as proportionality of punishment and the requirement that a wrongdoer have acted with intent to cause harm (*mens rea*). In ignoring these principles, H.R. 503 is an unsound piece of crime legislation.

Because I believe H.R. 503 to be both unnecessary and unwise, I urge the subcommittee to reject it.

#### NOTES

<sup>1</sup>On July 21, 1999, I testified before this Subcommittee in person regarding H.R. 2436, the version of the Unborn Victims of Violence Act introduced in the 106th Congress. Because H.R. 2436 and the pending H.R. 503 are substantially the same, my testimony this year substantially duplicates the testimony I previously provided. Nonetheless, I wish this statement to appear in the record of the current hearing so that it is available to members of Congress considering the pending bill.

<sup>2</sup>I wish to make clear that I am not testifying on behalf of the American Bar Association or any other entity with which I am affiliated. Nor am I testifying on behalf of any of my law or lobbying clients. For example, it is a matter of public record that I have represented Planned Parenthood Federation of America (PPFA) with respect to pharmaceutical pricing issues, but I do not represent PPFA at this hearing. The views I express herein are strictly my own.

<sup>3</sup>The bill's new §1841(a) defines the term "unborn child" tautologically as "a child in utero." Unless the drafters of H.R. 2426 intend to word "child" to imply viability, the bill would apply to conduct that impacted a first trimester pregnancy. Whether an "unborn child" of such gestational age constitutes a human being raises constitutional issues beyond the scope of this testimony.

Mr. Speaker, this bill really has nothing to do with protecting a fetus and it has everything to do with taking away a woman's right to choose. That is why all the women's organizations, that is why all the domestic violence

organizations oppose it, but the Bush administration supports it. It is a sham, it is aimed at overturning *Roe v. Wade*, it is further aimed at marginalizing female victims, and it is plainly unnecessary.

It is plainly wrong. I urge a no vote against this antiwoman bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 1½ minutes.

Mr. Speaker, on July 25, 2000, the House of Representatives, by a vote of 417-0, passed the Innocent Child Protection Act. This bill would prohibit either the Federal Government or any State from executing a woman while she carries a child in utero. That bill defined "child in utero" in the same language as the legislation that is before us.

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We heard the gentleman from New York (Mr. NADLER), and others, talk about two-cell zygotes and other terms that have been used during the development of the *Homo sapiens*, but the protection that was given to the child in utero by the bill that passed last year by a vote of 417-0, I have the roll call here. I noticed the gentleman from New York (Mr. NADLER) endorsed this definition when it came to the death penalty, as did the gentlewoman from New York (Mrs. MALONEY) and the gentlewoman from California (Ms. LOFGREN). Why should we not use the same definition that everybody endorsed last year when it came to executing pregnant women at the State and Federal level in the legislation that sets up this separate crime?

I intend to be consistent in my votes by voting for this definition in this bill, as I did last year for the definition in the other bill.

Mr. Speaker, I yield 3 minutes to the gentleman from Indiana (Mr. PENCE).

Mr. PENCE. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for yielding me this time.

Mr. Speaker, I rise today as a new Member of this body in strong support of H.R. 503, the Unborn Victims of Violence Act, offered by my friend and colleague, the gentleman from South Carolina (Mr. GRAHAM).

Mr. Speaker, it amazes this new Member that there are those who oppose this initiative before the House, which is simply an effort to defend unborn children from violence. Do we not all have an interest in protecting mothers and their children from violent attackers? Who in this House has not read a story in the newspaper about an expectant mother like that described by the Committee on the Judiciary chairman, the story of Shawana Pace whose boyfriend paid to have her assaulted and because of that abuse she lost her child? The outrage and the anger of the public after these events demands that we take action.

Mr. Speaker, the opposition, in their zeal to prevent this bill from becoming law, would have us believe that punishing criminals for existing Federal

crimes would compromise the rights of mothers. This premise is simply wrong. The Unborn Victims of Violence Act specifically targets not women or women's rights, but criminals who cause death or harm to an unborn child while committing one of 63 existing Federal crimes.

As the gentlewoman from Pennsylvania (Ms. HART) observed, the Journal of the American Medical Association published a recent study that found that homicide is the most common cause of death among pregnant women in Maryland. A week later, JAMA published another study that found that 6 percent of all pregnant women in North Carolina are abused while they are pregnant.

Despite these alarming facts, Federal law does not punish criminals who prey on pregnant women simply because they are pregnant.

The alternative to this bill to be offered later today fails to address a central cause of violence against pregnant women because it fails to recognize that the child is often the primary target of the assailant.

Mr. Speaker, by protecting the child we protect the mother. It is a fundamental axiom of Western civilization, the belief in the sanctity of human life. By failing to recognize crimes against the life of the unborn child, we place not only one life at risk but two. We must correct this oversight in Federal law and ensure that criminals who prey on pregnant women and their unborn children pay the appropriate penalty for their crimes.

I urge all of my colleagues to support the Unborn Victims of Violence Act. This Congress should seize this opportunity to extend the protection of the law to the most defenseless in our society.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. SOLIS).

Mr. Speaker, will the gentlewoman yield?

Ms. SOLIS. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I thank the gentlewoman from California (Ms. SOLIS) for yielding.

Mr. Speaker, I think the gentleman from South Carolina (Mr. GRAHAM) was the one that said that H.R. 503 is a two-victim bill. The bill on the floor is not a two-victim bill. The bill only recognizes one victim, the embryo or the fetus. Harm to the woman does not factor into the bill at all. The bill does not require prosecution of the crime against the woman, and so to call it a two-victim bill is a fallacy.

Ms. SOLIS. Mr. Speaker, I also would like to join my Democratic colleagues and rise in strong opposition to H.R. 503, the so-called Unborn Victims of Violence Act. While the bill supporters claim that they want to protect pregnant women from crime, their bill does no such thing. Instead, the bill recognizes for the first time a fetus as a person, with rights separate and equal to that of a woman.